

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

STATE OF MARYLAND,

*Plaintiff,*

v.

EXXON MOBIL CORPORATION, *et al.*,

*Defendants.*

Case No.: 1:18-cv-00459-SAG

\* \* \* \* \*

**MEMORANDUM & ORDER**

Defendants have filed a motion to compel certain documents withheld by the State of Maryland under the deliberative process privilege. ECF 725. The Parties have provided accompanying briefing. *See* ECF 725-1; ECF 725-2; ECF 725-3. This Court has reviewed the filings and finds that no hearing is necessary for Defendants’ motion to compel documents regarding deficient privilege log entries. *See* ECF 725-1 at 3.<sup>1</sup>

The State’s privilege log entries are “facially insufficient unless they both specify a particular policy or issue to which the draft document relates and identify the document’s function and significance in [the State’s] decisionmaking process.” *In re Methyl Tertiary Butyl Ether (MTBE) Prod. Liab. Litig.*, 898 F. Supp. 2d 584, 592 (S.D.N.Y. 2012).

Upon review of the privilege log entries challenged as “insufficient” in Exhibits 9 and 10, *see* ECF 725-1 at 40–97, this Court finds that the following privilege log entries do not adequately identify the decision at issue, and therefore directs Plaintiff to produce the following documents:

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<sup>1</sup> This Court will hear argument and defers judgment on Defendants’ remaining issues raised by their motion to compel, *i.e.*, information related to regulation of underground storage tanks, information related to potable water sampling and testing, information relevant to defense of natural resource damages claims, and procedural disputes with depositions.

**Exhibit 9 (Focus Site Privilege Log)**

<b>P.L. No.</b>	<b>Privilege Basis</b>
12	Internal memorandum from Paul Certeza to file through Andrew Miller, dated Jan. 17, 2013, analyzing case status
13	Internal memorandum from Paul Certeza to file through Andrew Miller, dated Jan. 17, 2013, analyzing case status
2661	Email requesting guidance regarding content of draft response to Exxon's request
2662	Emails discussing response to Exxon's request, discussing issues still in need of resolution
2663	Emails requesting and providing guidance regarding content of draft response to Exxon's request
2664	Emails discussing response to Exxon's request, discussing issues still in need of resolution
2665	Emails discussing response to Exxon's request, discussing issues still in need of resolution
2745	Emails discussing initial assessment of SHA's latest update, asking for input and providing suggestions
2746	Email providing initial assessment of SHA's latest update, and asking for input

**Exhibit 10 (Non-Site-Specific Privilege Log)**

<b>P.L. No.</b>	<b>Privilege Basis</b>
133	Partially illegible handwritten notes describing MDE deliberations and persons to contact for site-specific issues
136	Largely illegible handwritten notes, comments, and questions on issues unrelated to MTBE
141	Largely illegible handwritten notes on site-specific issues and mention of planning, with no mention of MTBE
403	MDE/WAS OCP 2009 Proposed Regulation Summary, August 19, 2009
1144	Draft memo from Waste Management Administration discussing potential legislation for 2007 that the administration might want to propose or support with no discussion of the risks or benefits of MTBE
1146	Draft document discussing MDE's preliminary internal positions re pending bills in the General Assembly with no discussion of the risks or benefits of MTBE
1982	Document describing legislative issues for MDE in 2002, including recommendations under consideration, analysis of the pros and cons of certain legislation, and opinions on the necessity of certain legislation
1983	Document describing legislative issues of relevance to MDE in 2002, including bills being considered by MDE for proposal, with no discussion of risks or benefits of MTBE

1985	Draft document describing MDE's legislative proposals for the 2007 legislative session, including rationale for such proposals with no discussion of the risks or benefits of MTBE
2018	Briefing memo from ARMA for January 7, 1999 meeting with Secretary Nishida, describing legislative, litigation, and regulatory issues requiring the Secretary's attention or decision, with no discussion of risks or benefits of MTBE

In addition, Plaintiff is directed to specify the relevant issue (*e.g.*, related statute or concern) for entries regarding "potential enforcement action[s]" for the following Focus Site Privilege Log (Exhibit 9) entries: P.L. Nos. 2196, 2198, 2199, 2200, 2201, 2202, 2203, 2205, 2206, 2211, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2621, 2628, 2653, 2654, 2724, and 2736.

For these reasons, it is this 18th day of July, 2023, **ORDERED** that the State produce the documents identified in the above two tables, and specify the relevant issue for the above listed entries to Defendants. The remaining privilege log entries challenged by Defendants are sufficient.

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/s/  
Stephanie A. Gallagher  
United States District Judge